



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081

OR2011-04114

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412262.

The Richardson Independent School District (the "district") received requests for the bid tabulations pertaining to, all proposals submitted in response to, and a copy of Request for Catalogue Offer ("RFCO") No. 06060803: Computer Equipment, Peripherals and Services.¹ You state the district has made some of the requested information available to the requestors. You claim portions of the submitted bid proposal information are excepted from disclosure under section 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Hewlett-Packard ("HP") and M&A Technology, Inc. ("M&A"). Thus, pursuant to section 552.305 of the Government Code, you notified these companies of the requests and of each company's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We

¹You state the district received clarification from the second requestor regarding his request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

have received comments from M&A. We have considered the submitted arguments and reviewed the submitted information.

Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. You contend the e-mail address and password you have marked in M&A's bid proposal and the district's federal tax exemption number you have marked in HP's bid proposal are excepted under section 552.136. You have not, however, explained how this information constitutes access device numbers that may be used to obtain money, goods, services, or another thing of value for purposes of section 552.136. Thus, you have failed to demonstrate the applicability of section 552.136 of the Government Code to this information. Consequently, the district may not withhold the marked e-mail address, password, and federal tax exemption number under section 552.136 of the Government Code. As no other exceptions to disclosure have been claimed for this information, it must be released. We note, however, HP's and M&A's bid proposals contain insurance policy numbers, which we have marked. We conclude these insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the district must withhold the marked insurance policy numbers in HP's and M&A's bid proposals under section 552.136 of the Government Code.²

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.*

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from HP explaining why its remaining bid proposal information should not be released. Therefore, we have no basis to conclude HP has protected proprietary interests in its remaining information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the district may not withhold any of HP's remaining information on the basis of any proprietary interests HP may have in the information.

We note some of HP's remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Accordingly, HP's remaining information must be released in accordance with copyright law.

Next, M&A seeks to withhold information in its proposal the district has not submitted for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

M&A asserts portions of its remaining information are excepted from disclosure pursuant to section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104. Section 552.104, however, is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government), 522 (1989) (discretionary exceptions in general). As the district does not seek to withhold any information pursuant to this exception, we find section 552.104 is not applicable to M&A's information. *See* ORD 592 (governmental body may waive section 552.104).

M&A claims some of its remaining information is excepted from disclosure under section 552.110(a) of the Government Code, which protects trade secrets obtained from a person that are privileged or confidential by statute or judicial decision. Gov't Code

§ 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person's claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.³ Open Records Decision No. 402 (1983).

³The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

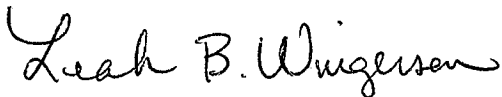
M&A claims portions of its proposal constitute trade secrets under section 552.110(a). Upon review, we find M&A has established its customer information constitutes trade secrets. Therefore, the district must withhold this information, which we have marked, under section 552.110(a) of the Government Code. We find, however, M&A has not demonstrated how the remaining information it seeks to withhold, which includes employee qualifications and equipment certifications, meets the definition of a trade secret. *See* Open Records Decision Nos. 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, the district may not withhold M&A's remaining information at issue under section 552.110(a) of the Government Code. As M&A has not claimed any other exceptions to disclosure, its remaining information must be released.

In summary, the district must withhold the marked insurance policy numbers in HP's and M&A's bid proposals under section 552.136 of the Government Code and the marked customer information in M&A's bid proposal under section 552.110(a) of the Government Code. The district must release the remaining information, but any of HP's information protected by copyright must be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 412262

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Christopher A. Kalis
Attorney at Law
For M&A Technology, Inc.
5160 Village Creek Drive, Suite 100
Plano, Texas 75093
(w/o enclosures)

Ms. Hank Nations
Hewlett-Packard
3000 Waterview Parkway
Richardson, Texas 75080
(w/o enclosures)